UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PRO-FOOTBALL, INC., **Plaintiff,** **v.** **SUZAN SHOWN HARJO, *et al.*,** **Defendants.**	**Civil Action No. 99-1385** **(CKK/JMF)**

MEMORANDUM OPINION

This case was referred to me by Judge Kollar-Kotelly for discovery disputes pursuant to LCvR 72.2(a). Currently pending for resolution is defendants' Motion to Preclude Testimony Or Compel Discovery. For the reasons set forth below, defendants' motion to compel discovery will be granted and the deposition of Mr. Snyder reconvened.

DISCUSSION

On February 28, 2002, I issued an Order authorizing the defendants to take the deposition of the Washington Redskins team owner, Daniel Snyder ("Snyder"), in order to probe his knowledge of the value of the trademark (the "mark") and its registration. Specifically, I ordered that discovery could be had on the value of the mark and any prejudice that may result from cancellation of the mark. Memorandum Opinion ("Memo. Op."), February 28, 2002, at 3. In other words, the prejudicial effect of this Court upholding the cancellation of the mark and its relation to the value of the mark would be a permissible line of questioning for the defendants.

On June 3, 2002, both parties convened to take Snyder's deposition. Plaintiff's counsel repeatedly instructed Snyder not to answer questions[1] as "beyond the scope" under the apparent authority of my Order. However, plaintiff's counsel objected to questions that are related to the following topics set forth in my Memorandum Opinion:

- The effect of cancellation of the marks on the value of the marks;
- The effect of cancellation of the marks on the value of the franchise;
- The value of the benefits that the franchise will lose if one or more of the marks are cancelled;
- The expectations of the franchise or its owners for future revenues attributable to the marks;
- Statements made by the franchise or its owners or agents that concern the marks.[2]

Memo. Op. at 11.

For example, Snyder was asked whether he believed if the value of his purchase agreement in April 1999 would be "impaired or de-valued as a result of the ruling by the Trademark Trial and Appeal Board." Snyder Dep. Tr. at 94:10-15. His attorney instructed him not to answer, stating that

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[1] Note that this is a practice highly disfavored by the Federal Rules of Civil Procedure. FED. R. CIV. P. 30(d)(1) & Advisory Committee Notes ("Directions to a deponent not to answer a question can be even more disruptive than objections."). See e.g. Pilates, Inc. v. Georgetown Bodyworks Deep Muscle Massage Centers, Inc., 201 F.R.D. 261, 262 (D.D.C. 2000)(finding that "[w]here there is no claim of privilege in relation to questions asked on deposition, Rule 30(d)(1) and Rule 26 relating to the scope of discovery should be strictly applied."); Ralston Purina Co. v. McFarland, 550 F.2d 967, 973 (4th Cir. 1977)(action of plaintiff's counsel in directing his witness not to answer questions posed during deposition was indefensible and at variance with discovery rules; if plaintiff's counsel had any objection, he should have placed it on the record and the evidence would have been taken subject to such objection).

[2] I further limited the scope of those statements to only those that referred to the worth of the marks and not to documents or statements about the litigation *in general*. This is not to say that no question could be asked about the current litigation; only that it must be limited to the value of the mark. Memo. Op. at 11 & n.4 (emphasis added).

the topic was outside the scope of the deposition. Id. at 94:16-22; 95:1-4. To the contrary, this question is not only within the scope of my Order, but it is also relevant to the value of the mark and the financial effect cancellation of the mark may have on the franchise.

At the outset of this dispute, it was my intention for the parties to call me if such a problem arose during the deposition. Memo. Op. at 15. Accordingly, my law clerk made the necessary arrangements and informed the parties of my availability during the month of June.[3] Virtually no question was answered during the deposition and neither party bothered to call, allowing me no opportunity to rule on any of the objections. That failure has resulted in an abundant waste of everybody's time.

Consequently, a new procedure will have to be implemented. This time, Snyder's deposition will be conducted in my chambers or a courtroom on a day that my calendar is open so that I may personally preside over the questioning. At such time, I will rule on all objections and the witness will have to answer if I overrule the objection. I see no other possible solution.

An Order accompanies this Memorandum Opinion.

JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated:

[3] I was the magistrate judge on criminal duty in June and a great deal of my time was dedicated to the criminal calendar. However, the parties were instructed that, if they were to call, I would make myself available during breaks and after 3:00 p.m.

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ORDER

In accordance with the accompanying Memorandum Opinion, it is, hereby,

ORDERED that defendants' Motion to Preclude Testimony Or Compel Discovery [#61] is **GRANTED.** It is further, hereby,

ORDERED that the parties shall, within ten (10) days of the issuance of this Order, jointly contact chambers and speak to my law clerk in order to reschedule Mr. Snyder's deposition at a time when I am available.

SO ORDERED.

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JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated: